

(1997) 01 AP CK 0012
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 21 of 1988

Smt. P. Seshamma and Others

APPELLANT

Vs

Dr. Patri Krupasagar and Others

RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Constitution of India, 1950 — Article 136
Succession Act, 1925 — Section 213

Citation : (1997) 2 ALT 182 : (1997) 1 APLJ 239

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; C. Suseela Devi, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Madhav Bapat, J.—The appellants herein were originally plaintiffs who had instituted O.S. 872 of 1982 in the Court of the V Additional Judge, City Civil Court, Hyderabad.

2. The plaintiffs instituted the suit for partition and allotment of one-fourth share to them in the household property. The facts leading to this litigation can be briefly narrated as follows :- Plaintiff No. 1 is the wife of the deceased Dr. Dayasagar Patri and plaintiffs 2 and 3 are the sons of the deceased Dayasagar. Defendants 1 to 3 are the brothers and defendant No. 4 is the sister of Dayasagar.

It is further stated by the plaintiffs in their suit that the household property was purchased by the father-in-law of plaintiff No. 1 and grandfather of plaintiffs 2 and 3, namely, Narasimha Bindu. Mr. Narasimha Bindu was a doctor and he was practising medicine at various places including Hyderabad. The husband of plaintiff No. 1, named, Dayasagar predeceased his father on 23-11-1976. Narasimha Bindu died on 6-6-1981, Dayasagar was also a doctor but he was homoeopathic doctor. During the lifetime of Dayasagar his father Narasimha

Bindu had executed a will on 18-1-1973 which is produced on record at Ex, A-9 and all the sons were given equal shares in the property.

It is further stated by the plaintiffs that on the strength of Ex. A-9 they. 15 are entitled to have one-fourth share in the household property and therefore, the suit was instituted.

The defendants, on appearance, filed their written statement contending that Narasimha Bindu had executed one more will after Ex.A-9 was executed, in which the plaintiff's branch was not given any share. The entire household property was bequeathed by Narasimha Bindu in favour of his three living sons, i.e., defendants 1,2 and 3 and therefore, it was pleaded that the plaintiffs are not entitled to claim any share in the property.

3. It appears from the record that on the strength of the evidence recorded by the learned trial Judge, the learned trial Judge was pleased to hold that the deceased Narasimha Bindu had executed one more will (codicil) after Ex. A-9 was executed. The second will was produced on record at Ex.B-8 in which the plaintiff's branch was not given any share by Narasimha Bindu and thus, the claim of the plaintiffs came to be dismissed. Aggrieved by the said judgment and decree dismissing the suit, the plaintiffs have approached this Court in appeal on the grounds as stated in the appeal memo.

4. In order prove their claim the plaintiffs led evidence of P.W.1 who happens to be the plaintiff No. 1 and also the evidence of the 2nd plaintiff who is the son of the first plaintiff as P.W.2. As against the evidence of the plaintiffs the defendants led the evidence of D. Ws. 1 to 4. D.W.1 happens to be the first defendant. D.W.2 is a notary and D. Ws. 3 and 4 are the attesting witnesses to the will Ex.B-8.

5. As stated earlier, it was the contention of the plaintiffs that they got the share in the property on the strength of the will Ex. A-9. It was stated by plaintiff No. 1 in her evidence that before institution of suit for partition a suit notice was issued under Ex. A-1 dated 27-1-1982 to the defendants calling upon them to give one-fourth share in the house but no reply was sent by the defendants. The defendants filed written statement contending that Ex.B-8 will was executed by the deceased Narasimha Bindu.

6. The learned Counsel Mr. Venkataramana appearing on behalf of the appellants/ plaintiffs submitted at the Bar that the defendants never spoke about the existence of Ex.B-8 at any point of time and therefore, Ex.B-8 must be held to be not genuine and even if at all the execution is held to be proved, it must be held that the will was executed by the deceased Narasimha Bindu in suspicious circumstances and therefore, no reliance can be placed on Ex.B-8 will.

The learned Counsel further submitted that no specific reasons are assigned by the defendants in their evidence to show as to why the plaintiffs were denied their legitimate share in the household property. It was further contended by the learned counsel that as a matter of fact, when Dayasagar predeceased his father,

Dr. Narasimha Bindu, leaving behind the plaintiffs herein, normally Narasimha Bindu would have created more safe corner for the plaintiffs and he ought to have given them more share. Therefore, it cannot be said that the plaintiffs' branch was denied their legitimate share.

The learned Counsel further submitted that unless the will on which the defendants relied upon is proved beyond suspicion, the will is got to be interpreted as not genuine and the plaintiffs are entitled to claim one-fourth share in the property.

7. Reliance was kept by the learned counsel for appellants on a ruling in Raj Kumar Deen (died) per L.Rs. Vs. Dr. A.S. Din, . It is a judgment of a learned single Judge of this court in which the learned single Judge observed as follows :-

Succession Act, 1872, Section 213-Probate-Will-Suspicious circumstances-Propounder has to remove all the suspicious circumstances attending on the execution of the Will-In the instant case the unnatural disposition of the properties by the propounder, totally eliminating one of his sons, doubt about the genuineness of the signatures in the will and also about genuineness of the signatures of the attestors and about the participation of the Advocate in the preparation of will resound suspicion-No interference with the conclusion of the Court below that the appellant had failed to prove the will."

In the present set of facts it is not in dispute that the defendants led evidence of D.W.3 and D.W.4 who were attesting witnesses to the will Ex.B-8. D.Ws.3 and 4 have amply proved by their evidence that the deceased Narasimha Bindu had executed the will and he has put the signature in their presence and they had seen the deceased signing the will and the deceased had also seen them putting their signatures as attesting witnesses. Apart from proving will by leading the evidence of the attesting witnesses, the defendants had led the evidence of D. W.2 who happened to be the notary/Advocate who had attested the will. It is true that D.W.2 does not know the contents of the will but it is suffice to say that D.W.2 had specifically stated in his evidence that he was present when the deceased Narasimha Bindu executed the will.

8. Apart from the aforesaid facts it can be seen from Ex.B-8 that Ex.B-8 is also attested by a doctor by making an endorsement that Narasimha Bindu was in disposing state of mind at the time of execution of the will. The doctor who has put the endorsement on the will happens to be a close friend of the deceased Narasimha Bindu. Under these circumstances, there is no reason to disbelieve the endorsement made by the doctor on the will Ex.B-8.

9. The learned Counsel for the appellants also relied upon a ruling in Ram Piyari v. Bhagwant, 1990 SCC 364. in which their Lordships of the Supreme Court were pleased to observe as follows :-

"Will-Genuineness of - Suspicious circumstances - Must be ruled out by clear evidence - Testator must be in a testamentary capacity or have a disposing state

of mind-Will alleged to have been executed one day before death of the testator be questing all his properties to the sons of one of his two daughters while totally disinheriting the other daughter - Document written in expert professional language roping in all possible property - Held on facts, Will not free from suspicion and hence invalid - Contrary view taken by Courts below being based on erroneous applications of principle of law, open to interference by Supreme Court - Constitution of India, Article 136"

The learned Counsel further placed his reliance on a ruling in Harbans Singh v. Hardayal Singh, 1996 (3) ICC 504 (P & H). in which a Division Bench of the Punjab & Haryana High Court had observed as follows:-

"Will-Succession Act, 1925, Section 63-Suspicious circumstances-Proof- Held that if any genuine reasonable or bona fide doubt is created regarding the execution of the will or the mental faculty of the testator, then a duty is cast upon the propounder and the beneficiary of the will to remove the suspicious circumstances by placing satisfactory material on record."

The learned Counsel further placed reliance on a ruling in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, . in which their Lordships of the Supreme Court were pleased to observe in paras 20 and 21 as follows:-

"20 There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances, The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; 40 the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

(21) Apart from the suspicious circumstances to which we have just referred in some cases the will propounded disclose another infirmity. Propounders

themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "Conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive." Further reliance was placed by the learned Counsel for the appellants on a ruling in *Kalyan Singh Vs. Smt. Chhoti and Others*, . In para 20 of the said judgment their Lordships were pleased to observe as follows:-

"20 It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the Court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the Court is not confined only to their testimony and demeanour. It would be open to the Court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the Court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party."

In the present set of facts it is evident from the record that the defendants have proved Ex.B-8 by calling the attesting witnesses and notary. In addition to the above evidence the defendants have also produced the handwritten draft of a Will which was prepared by the deceased Narasimha Bindu, and which was subsequently typed and got attested. It is nowhere doubted that the handwritten will is not in the handwriting of the deceased Narasimha Bindu. The Will written in the handwriting of Narasimha Bindu was typed verbatim and was subsequently executed by the deceased Narasimha Bindu bequeathing his property to his three sons excluding the branch of the plaintiffs.

10. Considering the circumstances as brought on record, this Court comes to the

conclusion that Ex.B-8 is genuine document and there are reasons given by the deceased for not giving a share to the branch of the plaintiffs and. the deceased has stated the reasons as follows:-

"I had four sons, the first son Patri Daya Sagar (late Dr.D.S.Patri) has since deceased. It is now more than two and half years. Since than, my first daughter-in-law, Smt. P. Seshamma, the widow of my first son has started trouble in the family. Her behaviour and her arrogance has upset the peace and unity in the family. She has turned hostile and inimical to me and all the members of my family, including my other daughters- in-law . Her two sons Chi. Ajay Simha and Chi. Abhaya Simha also turned hostile to us. Despite all my efforts to give them college education and spending money over them, they remained dull and stupid and antagonistic. After the death of my first son, I got his daughter, Chi. Sow. Urmilla married. All my sons and their families went¹ to Kanakagiri and performed the marriage, But all are under the influence of their mother, who had cultivated hatred towards all others in the family. Chi. Sow. Urmilla is now a mother of a female child. But, she is also under her mother's instigation."

By going through the reasons assigned by the deceased in his will for not giving a share to the plaintiffs' branch it is evident that he was disgusted with the behaviour of the first plaintiff and her sons. After all the property in question was the self-acquired property of the deceased Narasimha Bindu and it was free will of Narasimha Bindu to bequeath his property to anyone he likes.

11. Considering the above facts on record, this Court has no Hesitation in holding that Ex.B-8 is a genuine document and the learned trial Judge was justified in dismissing the suit of the plaintiffs. This Court further holds that there is no merit in the appeal and it is accordingly dismissed. No costs.